IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Application No.517 of 2007
In
Second Appeal No.1308 of 2005

Shri Ashok Laxman Salave & ors. Applicants

Vs.

Krishna Ganu Kharat, since deceased
through his LRs.
1.Shri Duryoghan Krishna Kharat & ors. Respondents

Mr.Y.S.Jahagirdar, Senior Counsle with Mr.Siddharth Karpe i/b. M/s. YKS Legal for applicants.
Mr.K.B.Sonwalkar for respondents.

CORAM: B.H.MARLAPALLE, J.
April 19, 2007.

P.C.

1. Heard Mr.Jahagirdar, the learned Senior Counsel with Mr.Karpe instructed by M/s. YKS Legal for the applicants and Mr.Sonwalkar, the learned counsel for the respondents.

2. This application is filed for restoration of Second Appeal No.1308 of 2005 which was dismissed in default as per the order dated 27/4/2006. However, the application is filed beyond time and, therefore, there is a prayer for condonation of delay without filing a separate application for the same. The reasons for delay have been set out in paras 6 and 7 of the application and it is contended that the order

dated 27/4/2006 came to the knowledge of the applicants only as per the notice dated 8/3/2007 from the Taluka Inspector of Land Record, Malshiras calling upon them to remain present on 11/4/2007 for partition of the suit land.

3. Mr.Sonwalkar, the learned counsel for the respondents has filed an affidavit and opposed the application by pointing out that there is no justifiable reason made out to condone the delay which is inordinate and speaks of casual attitude of the applicants and their learned Advocates. It has been pointed out that the Second Appeal was filed on 27/4/2006 and the application states that it was dismissed on 22/6/2006. It is further stated that on 27/4/2006 when the order of dismissal in default was passed, Ms. Varsha Palav, the learned Advocate for the applicants issued a notice addressed to Mr. Sonwalkar for remaining present before the Court at 2.45 p.m. as she wanted to move a motion for setting aside the order of dismissal for default and for restoration of the second appeal and inspite of such notice having been issued, neither the motion was taken out nor any application for restoration was filed and after 278 days therefrom this application

has been moved. Mr.Sonwalkar further stated that the notice dated 27/4/2006 itself indicated that the learned Advocates of the applicants were aware of the order passed by this Court dismissing the Second Appeal and, therefore, there was no justification in waiting for 278 days to file an application for restoration. He, therefore, urged before this Court not to condone the delay in filing the application.

4. It appears, Civil Suit No. 17 of 1989 was filed before the Civil Judge, Junior Division at Malshiras by the present respondents and the suit was dismissed. The plaintiffs, therefore, filed Civil Appeal No.2 of 1993 which was allowed by the learned Addl. District Judge at Pandharpur by his judgment and order dated 14/10/1999 and as per the said decree, the plaintiff has been held to have 1/2 share in the suit properties and he has been directed to be put in possession of the said share. The appeal was waiting for admission and it appears that though it was filed on 3rd September 2002, by the time office objections were removed and it was registered under Stamp No.839 of 2005, a period of three years had already elapsed. It is also stated that the execution proceedings are pending as of now. It

would be, therefore, desirable that the appeal is heard on merits by restoring the same and condoning the delay caused but by levying exemplary costs, which amount will have to be allowed to be withdrawn by the respondents-plaintiffs.

5. Hence the delay is condoned on payment of costs quantified at Rs.10,000/- and the same shall be remitted within one week to the Registry of this Court by M/s.YKS Legal, Advocates for the appellants. The application is allowed in terms of prayer clause (b). List the appeal for admission on 30th April 2007.

6. Mr.Sonwalkar states that one of the plaintiffs i.e. Anil Bapu Kharat-respondent no.4 is present in Court and he has filed the affidavit on behalf of the other respondents and he can be refunded the amount so that the amount is disbursed in equal proportion amongst all the plaintiffs. The request granted and the registry to pay the said amount to the said respondent on his identification by Mr. Sonwalkar.

(B.H.MARLAPALLE,J.)